

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

T. RAWDON BEATY, an Individual,)	
)	
Plaintiff.)	
)	
v.)	CASE NO. 2:05-cv-880-W
)	
MERCK & CO., INC., a foreign)	
Corporation; TIM GRISWALD, an)	
Individual; and fictitious Defendants)	
A, B, C & D, being those persons, firms)	
or Corporations whose fraud, scheme to)	
defraud, and/or other wrongful conduct)	
caused or contributed to the Plaintiff's)	
injuries and damages, and whose true)	
names and identities are presently)	
unknown to Plaintiff, but will be)	
substituted by amendment when)	
ascertained,)	
)	
Defendants.)	

MOTION TO REMAND

Plaintiff respectfully moves the Court to remand this action to the Circuit Court of Barbour County, Alabama, pursuant to 28 U.S.C. § 1447(c). In support, Plaintiff shows the following:

1. Federal subject matter jurisdiction is not present. The Defendants have failed to meet their burden of establishing federal jurisdiction.

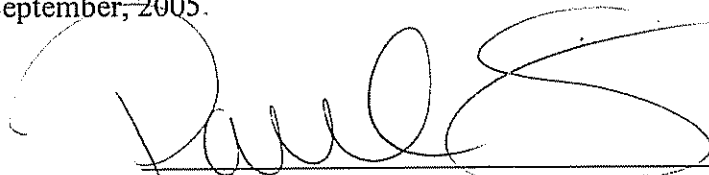
2. Diversity jurisdiction as outlined by 28 U.S.C. § 1332 is not present. The parties to this action are not diverse. Plaintiff is a resident of the State of Alabama. Merck & Co. is incorporated under the laws of the State of New Jersey and has its principal place of business in New Jersey. Defendant Tim Griswald is a resident of the State of Alabama.

3. Plaintiff states viable claims under Alabama law against all Defendants. All Defendants are properly joined to this action. Defendant Merck has failed to show that Tim Griswald, a resident of Alabama, is fraudulently joined.

4. The removing Defendant failed to obtain consent or timely consent to removal under 28 U.S.C. § 1441 from all properly served Defendants.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand, Plaintiff urges the Court to remand this action to the Circuit Court of Barbour County, Alabama.

Done this 26th day of September, 2005.

A handwritten signature in dark ink, appearing to read "Paul Sizemore", written over a horizontal line.

ANDY D. BIRCHFIELD, JR. (BIR006)
PAUL SIZEMORE (SIZ004)

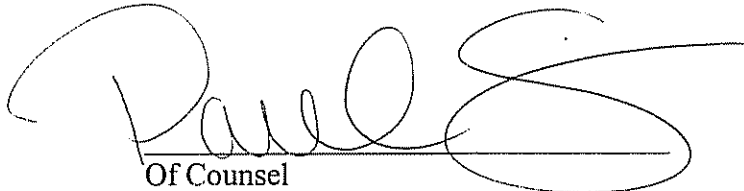
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the parties as listed below by placing a copy of same in the United States Mail, first class postage prepaid, on this the 26th day of September, 2005.

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